

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE PELOTON INTERACTIVE, INC.
DERIVATIVE LITIGATION,

Lead Case No.: 1:21-cv-02862-CBA-PK

STIPULATION AND ORDER REGARDING STAY OF ACTION AND RELATED MATTERS

WHEREAS, on May 20, 2021, Plaintiff Alan Chu (“Chu”) filed a shareholder derivative action on behalf of nominal defendant Peloton Interactive, Inc. (“Peloton” or the “Company”) in this Court alleging claims for breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, and waste of corporate assets against defendants John Foley, Jill Woodworth, Erik Blachford, Karen Boone, Jon Callaghan, Howard Draft, Jay Hoag, William Lynch, and Pamela Thomas-Graham and for violations of Section 14(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and for contribution under Sections 10(b) and 21D of the Exchange Act against Mr. Foley and Ms. Woodworth, captioned *Chu v. Foley et al.*, Case No. 1:21-cv-02862 (the “*Chu* Action”);

WHEREAS, on August 13, 2021, Plaintiff Moshe Genack (“Genack”) filed a derivative action on Peloton’s behalf in this Court alleging claims for breach of fiduciary duty, contribution and indemnification, aiding and abetting, unjust enrichment, gross mismanagement, and violation of Section 14(a) of the Exchange Act against John Foley, Erik Blachford, Karen Boone, Jon Callaghan, Howard Draft, Jay Hoag, William Lynch, and Pamela Thomas-Graham arising out of several common facts as alleged in the *Chu* Action, among others, captioned *Genack v. Foley, et al.*, 1:21-cv-04583 (the “*Genack* Action”);

WHEREAS, on August 19, 2021, Plaintiff Xingqi Liu filed a shareholder derivative action in this Court alleging substantially similar facts as alleged in the *Chu* and *Genack* Actions and alleging claims for breach of fiduciary duty and for violations of Section 14(a) of the Exchange Act against the same defendants as in the *Chu* Action, captioned *Liu v. Foley, et al.*, Case No. 1:21-cv-04687 (the “*Liu* Action”);

WHEREAS, on October 13, 2021, Chu, Genack and Liu filed a Joint Stipulation and [Proposed] Order Consolidating Related Shareholder Derivative Actions and Establishing a Briefing Schedule on Leadership (ECF No. 21);

WHEREAS, on October 26, 2021, the Court entered an Order (ECF No. 22, the “Consolidation Order”) consolidating the *Chu*, *Genack* and *Liu* Actions under the caption *In re Peloton Interactive, Inc. Derivative Litigation*, Lead Case No. 1:21-cv-02862;

WHEREAS, on November 23, 2021, Plaintiff Anthony Franchi (together with Chu, Genack and Liu, the “Plaintiffs”) filed a shareholder derivative action in this Court arising out of common facts also alleged in the *Chu*, *Genack*, and *Liu* Actions and alleging claims for breach of fiduciary duty, unjust enrichment, and violations of Sections 14(a) and 20(a) of the Exchange Act against Erik Blachford, Karen Boone, Jon Callaghan, Howard Draft, John Foley, Jay Hoag, William Lynch, Pamela Thomas-Graham, Tom Cortese, Hisao Kushi, and Jill Woodworth (collectively, the “Individual Defendants” and together with Peloton, the “Defendants,” and together with Plaintiffs, the “Parties”), captioned *Franchi v. Blachford, et al.*, Case No. CV 21-6544 (the “*Franchi* Action”) (together with the *Chu*, *Genack*, and *Liu* Actions, the “Consolidated Derivative Action”);

WHEREAS, on November 24, 2021, Plaintiffs filed a Stipulation and [Proposed] Order Appointing Plaintiffs’ Co-Lead Counsel (ECF No. 24), which, among other things, stipulated to

the appointment of co-lead counsel and consolidation of the *Franchi* Action with the *Chu*, *Genack*, and *Liu* Actions, and which was so ordered by the Court on December 1, 2021 and entered on the docket on January 24, 2022;

WHEREAS, a factually related securities class action captioned *In re Peloton Interactive, Inc. Securities Litigation*, Case No. 1:21-cv-02369-CBA-PK (E.D.N.Y.) is currently pending in this Court (the “Class Action”), in which the plaintiff asserts federal securities claims against the Company and certain of its officers and directors;

WHEREAS, while Plaintiffs believe (and Defendants dispute) the Consolidated Derivative Action has merit independent of and is not dependent on the outcome of the Class Action, the Parties agree that the resolution of the motion(s) to dismiss that the defendants in the Class Action anticipate filing may help inform the manner in which the Consolidated Derivative Action proceeds;

WHEREAS, in an effort to proceed in the most efficient manner, the Parties agree that this Action should be temporarily stayed until the final resolution of any and all motion(s) to dismiss that the defendants in the Class Action file or anticipate filing, including the final and full resolution of any appeals taken from any order(s) related to such motion(s) to dismiss;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties through their undersigned counsel of record and subject to approval of the Court, as follows:

1. The Consolidated Derivative Action, including all deadlines and hearings, is hereby stayed until the motion(s) to dismiss that the defendants in the Class Action anticipate filing has been finally and fully resolved, including that any appeals have been concluded or the time for seeking appellate review has passed with no further action from the Class Action parties.

2. The parties have the option to terminate this stay if any derivative action asserting

the same or substantially similar allegations made in any of the *Chu*, *Genack*, *Liu*, and *Franchi* complaints is not stayed for a similar or longer duration by giving thirty (30) days' notice in writing via email to the undersigned counsel for the opposing parties. The parties also have the right to file a motion to lift the stay for any other reason. Any party who wishes to file a motion to lift the stay must meet and confer with the other parties at least fourteen (14) days before requesting a pre-motion conference.

3. Notwithstanding the stay of the Consolidated Derivative Action, Plaintiffs may file an amended complaint during the pendency of the stay. Defendants shall not be obligated to respond to the current complaint or any subsequent complaint while the Consolidated Derivative Action is stayed, and Defendants reserve all rights with respect to any subsequent complaint. In the event the stay is lifted, the Parties will meet and confer within fourteen (14) days and submit a proposed scheduling order to the Court for approval.

4. Except as otherwise agreed herein, the parties reserve all rights, objections, and defenses. Defendants preserve all rights, objections, and defenses, including but not limited to *forum non conveniens*, improper venue, and any other procedural or substantive challenge to the Consolidated Derivative Action.

Dated: February 3, 2022

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IT IS SO ORDERED this 11th day of February 2022.

Peggy Kuo

HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE